

REMARKS/ARGUMENTS

Claims 1-32 are pending. The Applicants respectfully submit that Claims 1, 2, 3, 15, and 16 should now be active, see the original Restriction Requirement. The Applicants also submit that Claims 20-32 are now subject to examination.

Claim 1 has been limited to particular species within the previously elected genus *Kluyveromyces*. Support for these particular species is found *inter alia* on page 10, lines 17-18 and in Tables 1-5 on pages 12-16 of the specification, as well as in original Claim 2. The non-elected claims have been revised to comply with U.S. practice, e.g., by revising “use claims” as method of use claims. Support for the changes to the use claims is found on pages 12-13 of the specification. New Claims 21-27 find support in original Claims 1-3 and on page 10, lines 12-14, of the specification. New Claims 28-32 find support in original Claims 15 and 16 and on page 10, lines 12-14, of the specification. Accordingly, the Applicants do not believe that any new matter has been added. Favorable consideration is now respectfully requested.

Restriction/Election

The Applicants acknowledge their prior election of Group IV, Claim 1, in the Response filed September 8, 2003. The Restriction Requirement mailed August 8, 2003 (see the last three lines of page 2), indicates that Claims 2, 3, 15 and 16 would be examined along with the elected group pertaining to yeasts: *Kluyveromyces*. Accordingly, the Applicants respectfully submit that absent further restriction the subject matter encompassed by original Claims 1, 2, 3, 15 and 16 (as well as new Claim 20) is subject to examination.

The Applicants also traverse the Restriction/Lack of Unity Requirement on the grounds that the Office has not demonstrated that the different types of yeasts (e.g., *Kluyveromyces*, *Issatchenkia*, etc.) and the different treatment methods (e.g., reducing

cholesterol, inhibiting secondary bile acid production) are not so linked as to form a single inventive concept. For example, as shown in Tables 11-13 on pages 33-35 of the specification, the different recited yeast strains each reduce cholesterol. Thus, these yeast strains are clearly interrelated in respect to their cholesterol lowering effects.

Moreover, non-elected product Claims 4-7, read on the elected species *Kluyveromyces*, and should be rejoined on the grounds that the Office has not shown that these products are patentably distinct from the *Kluyveromyces* of the elected group and because no undue burden would be imposed in the examination of this subject matter along with the elected group. Similarly, Claims 8-10 have been amended to be statutory claims and are now limited to the elected species *Kluyveromyces*. Rejoinder of these claims is also respectfully requested. In view of the above remarks, the Applicants respectfully request that the Restriction/Lack of Unity Requirement be withdrawn or at least withdrawn in part.

Rejection—35 U.S.C. §102

Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Robbins et al., U.S. Patent No. 4,251,519. This rejection is moot in view of the amendment of Claim 1. Robbins et al. do not disclose or suggest *Kluyveromyces marxianus* or *Kluyveromyces lactis* as now required by Claim 1 and therefore cannot anticipate this claim. Moreover, there is no suggestion or reasonable expectation of success in Robbins for the remarkable decreases in cholesterol obtained for animals fed on high cholesterol diets supplemented with either *Kluyveromyces marxianus* (65.5% reduction) or *Kluyveromyces lactis* (72.8% reduction) compared to control diets not containing these yeasts, see Table 11 on page 33 of the specification. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Norman F. Oblon  
Registration No. 24,618

Thomas M. Cunningham, Ph.D  
Registration No. 45,394

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/03)